

to have a bad pull to the left. In the first place it is common knowledge that brakes in normal conditions and under normal use do not suddenly go wrong without previous warning and in the second place the driver having been the regular driver of the vehicle must prior to the accident have noticed that there was a pull. I do not believe him when he says that the brakes were in order. The fact that P.W. 4 noticed nothing when testing the vehicle unladen in the Batu Road is a very different proposition than driving a laden lorry in the Klang Road."

"If a vehicle is heavily laden the pressure on the brake pedal to reduce speed must be proportionately heavier. That may well be why P.W. 4 did not notice anything because he tested the vehicle unladen."

Considering the latter passage first, when one checks this by an examination of the evidence of the Assistant Examiner (P.W. 4) one finds that what that witness said was that he did "not consider the load would aggravate the swerve."

It is an elementary proposition of law, too frequently overlooked with resulting confusion and possible injustice, that cases must be decided on the evidence and that the evidence must be such as is relevant and admissible under the Evidence Ordinance, that is, it must be either from admitted documents or the statements of witnesses or be something of which the Court can take judicial notice. The mechanical working of the braking system of a motor vehicle, albeit the standard hydraulic brake, and how such a braking system operates or fails to operate under normal conditions are not matters of which the Court can take judicial notice under the Evidence Ordinance. These are matters which must be proved as facts. In *Harpushad v. Shoe Dyal*⁽³⁾, their Lordships of the Privy Council said:—

"A Judge cannot without giving evidence as a witness import into a case his own knowledge of particular facts."

The learned President clearly, in my view, misdirected himself in importing into the case his own knowledge of matters of which there was not a shred of evidence before him.

It is well-established that although an appellate Court is slow to interfere with the findings of fact by a lower Court yet if it is convinced that the findings of the lower Court are ill-founded in the sense that they are based on some wrong principle of law or are against the weight of evidence it is bound to do so. I am satisfied here, for the reasons hereinbefore set forth, that the finding of fact that the brakes of the lorry had not been properly maintained cannot stand.

On a critical examination of the whole of the evidence I consider that the evidence did not prove beyond all reasonable doubt that the offence under regulation 98 of the Motor Vehicles (Construction and Use) Regulation, 1948 had been committed by the appellants.

For these reasons, I am of opinion that the appeal must be allowed, and the conviction and sentence of each of the appellants is set aside. The fines and costs, which I am informed have been paid by the appellants, must be refunded.

Appeal allowed.

Solicitors for the appellants: S. M. Yong & Co.

TRUSTEE OF CHETTIAR TEMPLE v. KEHAR SINGH.

[C. A. (Pretheroe, Ag. C.J., Murray-Aynsley, C.J. (8) Taylor, J.) November 2, 1953]

[K.L. — F.M. Civil Appeal No. 18 of 1953]

Practice and Procedure — Plaintiff instituting action as "Trustee of the Chettiar Temple" — Civil Procedure Code, s. 42(1) — Irregularity.

This was an appeal from a judgment of the High Court varying a decision of the Magistrate's Court in a Suit for arrears of rent. The material facts were that the appellant was the trustee of a temple and some outhouses — one of the latter was leased to the respondent and the dispute concerned the liability to effect repairs to the outhouse. Also it was alleged that the rent was in arrears. The appellant instituted the action as "Trustee of the Chettiar Temple" and not in his own name. During the course of the appeal it emerged that the trustee changes annually and that the then trustee who instituted the action was no longer the trustee.

Held: the proceedings in this case have been completely irregular from the start and must be set aside.

Case referred to:—

(1) *M. M. Ally & Co. v. Chellammah* (1948) M.L.J. 202.

CIVIL APPEAL.

D. G. Ironside for the appellant.
Respondent in person.

Cur. Adv. Vult.

Pretheroe, Ag. C.J. : — This is an appeal from the High Court where, also on appeal, that Court varied a decision of the Magistrate's Court.

The material facts are that the appellant was the trustee of a temple and some outhouses. One of the latter was leased to the respondent and the dispute concerned the liability to effect repairs to the outhouse. Also it was alleged that the rent was in arrears.

The appellant instituted the action as "Trustee of the Chettiar Temple" and not in his own name. During the course of the appeal it emerged that the trustee changes annually and that the then trustee who instituted the action is no longer the trustee. Sub-section (1) of section 42 of the Civil Procedure Code requires that the name and description of the plaintiff shall be given and the third sub-section of that section provides that, where the plaintiff sues in a representative capacity, the plaintiff shall show that he has an existing interest in the subject matter.

It is apparent therefore that the proceedings in this case have been completely irregular from the start and it is not possible at this stage to remedy the defect. As it is not possible to make an order which can be enforced the judgment of the High Court and that of the Magistrate's Court are set aside. Each side will bear his own costs throughout these proceedings and the deposit will be paid out to the appellant.

Murray-Aynsley, C.J. (S.) : — This litigation has been unfortunate. The respondent was sued in the Sessions Court for rent. He claimed to set off money spent by agreement on repairs. The President found that there was no agreement to this effect and in consequence awarded the plaintiff what was due for rent. The respondent appealed to the Supreme Court and the learned Judge allowed the appeal. He did not appear to upset the finding of fact of the President and on the documents he would have clearly been wrong if he had done so. How in the absence of agreement he found the landlord liable to repairs is not clear.

The respondent in his grounds of appeal referred to a case (*M. M. Ally & Co. v. Chellammah*⁽¹⁾) but in that case there was an admitted liability of the landlord to repair.

In the ordinary way the appeal would be allowed and judgment entered for the plaintiff for the sum awarded by the President. But this calls attention to the extraordinary way in which these proceedings have been taken. The plaintiff, now the appellant, has been described as the Trustee of the Chettiar Temple, Sentul. We do not know who he is but it seems probable that in any event he is not the same person as he who started the proceedings. He is not a corporation sole and it would be impossible to make out a money judgment in that form. I am afraid that the whole of the proceedings have been irregular and must be set aside, leaving the proper plaintiff to start again if he so wishes. As the point was not raised by the respondent at any stage, I think there should be no order for costs on this appeal or in either of the Court's below. Deposit to appellant.

Taylor, J. : — This is an appeal from a Judgment of the High Court varying a decision of the Magistrate's Court in a suit for arrears of rent.

The landlords are the trustees of a temple. They let one of their out-buildings to a carpenter, and disputes arose both about rent and repairs. The general inference from the evidence is that both parties had been unbusiness-like, and it is virtually impossible to prove clearly what contract was really made and what variations, if any, were ever effectively agreed. The matter was allowed to drift.

Eventually an action was started in the name of "Trustee of Chettiar Temple" as plaintiff. This is irregular, and it is a material irregularity because the trustees change from time to time. The temple is not incorporated, nor the trustees a body so constituted as to have succession or to sue in a corporate name. There have in fact been changes in the person responsible for this present litigation during its course, and as the proceedings stand it is impossible to make an order which would be effective. I think that the whole proceedings were defective because the parties to the original action were not properly cited, and that it is too late to rectify the matter now. In any event, no application for amendment or substitution was ever made. In these circumstances I think the only possible order is that both the judgments below be set aside and that both parties pay their own costs throughout.

Order accordingly.

Solicitors for the appellant : *Lovelace & Hastings.*

IBRAHIM BIN SAIDIN & ANOR. v. HITAM BIN ALI.

[O. C. J. (Wilson, J.) November 12, 1953]

[K.L. — Civil Suit No. 173 of 1952]

Land laws — Agreement to sell — Compulsory acquisition during Japanese occupation — Acceptance of compensation by the purchaser from the Japanese — Re-transfer of the land to original owner — Vendor's agreement to pay \$3,000 in default of transfer — Specific performance — The Essential (Trading with the Enemy) (Custodian) (General Vesting) Regulations, 1951.

By an agreement dated the 14th February 1944, in consideration of the sum of \$1,500 the defendant agreed to sell two pieces of land in the District of Klang to the plaintiffs. During the course of the Japanese occupation the land was in some way or another compulsorily acquired by the Japanese and handed over to a Japanese firm. For this compulsory acquisition compensation was payable to the owner. As the defendant was the registered owner the compensation was paid to the attorney of the defendant who paid the same to the plaintiffs. After the reoccupation of Malaya and as a result of the defendant paying the equivalent in re-valued money of the compensation paid for the compulsory acquisition of the land to the Custodian of Enemy Property, the land was re-transferred to the defendant. It was argued at the hearing that any rights which the plaintiffs may have had against the defendant were extinguished when the plaintiffs accepted compensation from the Japanese. It was further argued that assuming the agreement is genuine, which the defendant denied, the plaintiffs' only remedy was to claim the \$3,000.

Held: (1) under the Essential Regulations, the legal position in regard to the lands reverted, after the Japanese occupation had finished, to the position which existed before the compulsory acquisition by the Japanese subject to temporary vesting in the Custodian. The transfer of the lands back to the registered owner was subject to any encumbrances which existed before the compulsory acquisition by the Japanese; (2) there is no authority to show that where there is provision in an agreement that the Vendor will pay to the purchaser certain amount of damages in the event of a failure